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FCC MAIL BRANCH

Via Federal Express

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Petition For Re-Hearing by Higgins Lake Cable, Inc.; MM Docket 92-266

Dear Ms. Searcy:

Enclosed in conformance with the provisions of 47 C.F.R. §1.419(b) are original and 9 copies of the above captioned pleading for filing.

If you have any questions or require additional information, please contact us.

Very truly yours,

HOWARD & HOWARD

Eric E. Breisach

\335\93oa\searcy.ltr
cc: Mr. Steve Collini

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bcc: Ms. Judy Herman

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	MM Docket 92-266
Protection and Competition Act	)	
	)	
Rate Regulation	)	

JUN 21 1993

FCC MAIL BRANCH

PETITION FOR RECONSIDERATION

Higgins Lake Cable, Inc.

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June 18, 1993

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PETITION FOR RECONSIDERATION

Higgins Lake Cable, Inc. ("HLCI"), through its attorneys, Howard & Howard Attorneys, P.C., submits this *Petition for Reconsideration* in the above-captioned proceeding, respectfully requesting that the Federal Communications Commission ("Commission") modify certain aspects of its May 3, 1993 *Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned matter, as it relates to certain seasonal subscriber issues.

HLCI is a small cable system operator. HLCI operates a single cable television system serving six communities in rural central Michigan (Rosscommon and Crawford Counties). Many of the homes in these communities serve as summer residences. Consequently, HLCI's subscriber base varies by approximately 1,100 subscribers, from a low of 2,200 to a high of 3,300. Virtually all of the seasonal subscribers pay reconnect and disconnect fees on a regular basis and elect to have their cable service terminated while they are not occupying the dwelling.

Since the details of the benchmark computations were not revealed until the Commission's May 3, 1993 *Order*, HLCI was unable to present the facts contained in this *Petition* to the Commission prior to the conclusion of the rulemaking process. Additionally, HLCI believes that the Commission should find that reliance upon the facts presented in this *Petition* is in the public interest.

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HLCI's Concerns

HLCI has three principal concerns:

1. Reconnect and disconnect revenue associated with seasonal subscribers should be external to the benchmark calculations;
2. Seasonal subscriber counts fluctuate widely, leaving the outcome of benchmark computations principally a function of the point in time when benchmark rates are calculated; and
3. Inclusion of seasonal homes as "households" only during certain portions of the year will subject HLCI to changes in its regulatory status approximately every six months (regulated to unregulated and vice versa) in certain cable communities.

Each of these concerns, facts supporting those concerns, and proposed solutions are outlined below.

Reconnect and Disconnect Revenue

Subscribers who are absent from the area serviced by HLCI for a number of months from November to April) typically choose to have their cable service terminated. Because both the reconnection and termination involve the rolling of a truck to the subscriber home, HLCI incurs substantial costs associated with seasonal churn. HLCI currently charges only a modest reconnect fee and does not currently charge for disconnection. For the year ended December 31, 1992, HLCI had $13,681 in revenue to offset costs of installations. Assuming an average subscriber count of 2,750, that amount equates to almost $5.00 per subscriber. Of the total amount, approximately $10,000 ($3.64 per subscriber) was due solely to seasonal

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subscriber churn.

HLCI has reviewed the 419 data observations in the combined random sample and competitive database which the FCC used to compute the benchmark rate formula, benchmark tables and 10 percent rate rollback. Given that HLCI is a small business, it does not have the internal expertise, the financial ability, or the time to perform exhaustive research as to the attributes of each of the 419 systems in the database. As a result of its brief review, there is no indication, and HLCI believes that it can reasonably assume, that the database was not comprised predominantly of cable systems with approximately 40 percent of their subscriber base consisting of seasonal subscribers.

Under the benchmark rate system, the benchmark rate which HLCI derives after completing FCC Form 393, Part II, represents the maximum revenue which it can earn from the provision of regulated services. The underlying benchmark rates contained in the FCC database, however, did not include the extra revenue (to cover extra costs) incurred by systems with high levels of seasonal churn. Therefore, to require HLCI to deduct the revenues from seasonal reconnects/disconnects from their benchmark revenues is to require deduction from the benchmarks an amount which was not included in the benchmark. Such deduction would result in HLCI being permitted to charge less than an identically situated cable operator which had no seasonal subscriber churn.

HLCI concedes that the rates charged for disconnect/reconnect of seasonal subscribers is subject to cost-based regulation, and has no problem using an equipment basket type computation to determine the permissible amount of such charges. It does request, however, that the regulations be modified to permit either:

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1. Computation of a separate equipment basket amount for disconnect/reconnect activity associated with seasonal subscribers, the total of which would not be subtracted from the underlying benchmark rate (i.e., not included as part of the FCC Form 393, Part II, Worksheet 3 unbundling); or

2. Inclusion of all such costs in a single equipment basket, but segregation of the amount attributable to reconnection and disconnection of seasonal subscribers so that such amounts are not deducted from benchmark amounts (i.e., not included as part of the FCC Form 393, Part II, Worksheet 3 unbundling computation).

In other words, the amount of seasonal subscriber reconnect/disconnect fees should be subject to rate regulation, but the amount of such charges should be in addition to the total permissible rate using benchmarks, not part of the benchmark rate itself.

Additionally, the amount of revenue attributable to seasonal disconnects/reconnects should also be excluded from the amount of monthly equipment revenue used to compute the operator's current per channel, per subscriber monthly charge (Worksheet 1) or September 30, 1992 per channel, per subscriber monthly charge (Worksheet 2).

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Subscriber Count Fluctuation

HLCI has high subscriber counts during the summer (approximately 3,300) and low counts during the winter (approximately 2,200). Cyclical subscriber counts result in benchmark computations which are literally a moving target, with the final rate being impact:

1. If the number of subscribers changes in such a manner as to cause a different benchmark rate table to be used; and

2. The average monthly equipment revenue includes amounts which are attributable to average subscribers (on a per subscriber basis, such amounts would be understated in the summer and overstated in the winter).

HLCI proposes the Commission amend its rules and/or Form 393 instructions to permit an operator to use a 12-month rolling average where a system's subscriber count is subject to cyclical fluctuations. This average subscriber count would be used for purposes of computing benchmark rates (Worksheets 1 and 2) as well as determining the appropriate benchmark rate table to use.

Effective Competition Determinations

HLCI does not provide service to 30 percent or more of the "households" in some of its cable communities. Although the Commission has defined at 47 C.F.R. § 76.905(c), the term "household subscribing to or being offered video programming services" for the purposes of computing the existence of effective competition under the second and third tests (47 C.F.R. § 76.905(b)(2) and (3)), the Commission has not defined the term "household" for purposes of the first effective competition standard articulated in 47 C.F.R. § 76.905(b)(1).

In its computations, HLCI has included as "households" all dwelling units, whether they are seasonal or are occupied full-time. Although HLCI can foresee franchising authorities arguing that only full-time residences should be included in the computation,

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quantification of the number of homes based on occupancy would be administratively infeasible and would have substantial impact on the computation of the effective competition standards for all operators.

Neither HLCI, other cable operators or franchising authorities has access to the information to determine whether residential buildings (especially those which are not cable subscribers) are occupied on a seasonal or full-time basis. If homes which are not occupied during the winter are not full households, then all cable operators would be forced to measure "households" in the same manner. Operators could only count as "households" those residential buildings which were occupied, or prorate their value for the percent of time they were occupied during the year. Once again, such an interpretation would be completely unworkable. It would literally require operators to track the occupancy of every home and apartment unit in its franchise area. Such requirements clearly are not within the legislative mandate that the Commission promulgate regulations which "shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities..." 47 U.S.C. §543(b)(2)(A).

HLCI requests that the Commission amend its rules or affirmatively state that the mere fact that a residential dwelling structure (or any unit therein) may be uninhabited for any period of time is irrelevant and that the structure (or unit as the case may be) should be treated as a "household" for purposes of determining the existence of effective competition under the provisions of 47 C.F.R. §76.905(b)(1).

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HLCI appreciates the Commission's consideration of these issues as they impact not only HLCI, but also other small cable television systems located in areas where cyclical population migration causes aberrations in the benchmark calculations as initially set forth by the Commission.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.